

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 6, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1722

Cir. Ct. No. 2012TR4548

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF FOND DU LAC,

PLAINTIFF-RESPONDENT,

V.

KORRY L. ARDELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County:
RICHARD J. NUSS, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Korry Ardell appeals the circuit court's denial of his motion to reopen a default judgment entered against him after he failed to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

appear on charges of operating a motor vehicle without insurance (OMVWI). *See* WIS. STAT. § 344.62(1). Ardell was charged with OMVWI subsequent to a traffic stop on March 29, 2012. Ardell did not appear at the hearing on the citation for OMVWI, and the circuit court entered default judgment against him. Ardell moved to reopen the judgment, claiming that he never received notice of the hearing on the OMVWI citation. The circuit court denied Ardell’s motion, and Ardell appeals, arguing that the circuit court erroneously exercised its discretion in denying his motion to reopen because extraordinary circumstances, excusable neglect, and due process supported vacating the default judgment. We reject Ardell’s arguments and affirm.

¶2 In a civil traffic matter, the circuit court may reopen a default judgment if “the defendant ... shows ... that the failure to appear was due to mistake, inadvertence, surprise, or excusable neglect.” WIS. STAT. § 345.37(1)(b). Whether to reopen the judgment is a matter for the circuit court’s discretion; we will not overturn the circuit court’s decision unless it is clearly erroneous. *Schauer v. DeNeveu Homeowners Ass’n*, 194 Wis. 2d 62, 70-71, 533 N.W.2d 470 (1995) (interpreting WIS. STAT. § 806.07(1), of which paragraph (a) mirrors § 345.37(1)(b) standard).

¶3 Ardell, who did not appear at the hearing on his motion to reopen the default judgment for OMVWI, did not present any facts to show that his failure to appear at the hearing on the OMVWI citation was due to mistake, inadvertence, surprise, or excusable neglect. Ardell claimed in his written motion to reopen the judgment, and claims now on appeal, he did not find out about the hearing on the citation for OMVWI and subsequent default judgment until he received notice of the default judgment in the mail. But the citation for OMVWI shows that it was mailed to Ardell at the same address as the notice of default judgment and the

notice of hearing on his motion to reopen, neither of which he denies receiving. Furthermore, the circuit court noted that address was the same as that on the check Ardell submitted for a jury fee. Indeed, we know Ardell received the notice of the hearing on his motion to reopen the default judgment because he called the court fifteen minutes before the hearing to say he could not appear because he was “on the road.” The circuit court concluded that Ardell had presented no basis for reopening the case and denied Ardell’s motion to reopen “for not meeting statutory/necessary requirements.” This decision does not demonstrate an erroneous exercise of discretion, and we affirm.

¶4 Ardell makes some new arguments on appeal that do not address the standard to reopen a judgment under WIS. STAT. § 345.37(1)(b), but upon which we nevertheless briefly comment. First, Ardell argues that he had a meritorious defense because he was driving a company truck. This fact is not in the record, and Ardell does not explain why or how this excused his absence at the hearing on the citation. Second, he argues that he did not receive due process because he was not served with notice of the hearing on his OMVWI citation. Under WIS. STAT. § 345.11(5), the “use” of a uniform traffic citation by a peace officer constitutes adequate process. The word “use” is broad enough to include service by mail. *See State ex rel. Prentice v. County Ct. of Milwaukee Cnty.*, 70 Wis. 2d 230, 237, 234 N.W.2d 283 (1975) (filing of uniform traffic citation, after issuance to motorist, is sufficient process to confer personal jurisdiction). Finally, Ardell argues that he “did not receive in-effective assistance of counsel before the default judgment.” There is no constitutional right to counsel in this civil, traffic citation. *See State v. Sanchez*, 201 Wis. 2d 219, 226, 548 N.W.2d 69 (1996) (discussing Sixth Amendment right to counsel in criminal trials).

¶5 The circuit court did not err in refusing to reopen the default judgment.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

